IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 346 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX, Surat.

Versus

KIRAN CRIMPERS

Appearance:
MR. M.J. THAKORE, instructed by MR MANISH R BHATT, Advocate for Petitioner
MR NR DIVETIA, Advocate for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 04/12/96

ORAL JUDGEMENT (Per R. Balia,J.)

The Income Tax Tribunal, Ahmedabad Bench "A" vide its order dated 9.8.1983 at the instance of Commissioner of Income Tax had drawn statement of case and submitted to this Court for opinion following question of law said to be arising out of its order in ITA No. 833/Ahd/1982

relating to assessment year 78-79.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to extra shift allowance on Air-conditioning machinery used for crimping yarn?"

As is apparent from the question, the issue relates to allowability of additional deduction by way of depreciation termed as "extra shift allowance" in respect of air-conditioning machinery, which are used for crimping yarn in its factory premises, which is run for more than one shift.

The facts as appear from the statement of case are that assessee has claimed extra shift allowance in respect of air-conditioners used by it for its unit of crimping yarn. The air-conditioners were fitted separately to the wall of the room. The Tribunal also found that the air-conditioners were necessary for crimping yarn. On this finding the Tribunal by applying the decision of the Gujarat High Court in Industrial Machinery Manufacturers Pvt.Ltd. Vs. State of Gujarat, 1965 16 STC p.380, held that air-conditioners are plant and being essential for running crimping unit it fell in item (3) of Section (ii) B of Appendix (Part-I) Part-III and the assessee was entitled to extra shift allowance in respect of air-conditioners.

It has been urged by Mr. Thakore, learned Counsel for the Revenue that air-conditioners of all types including room air-conditioners are subjected to a specific entry in the same appendix (Part I) - Part III Section (i)B item (2) just above the item on which the assessee relies. Item (2) is followed by an inscription "N.E.S.A". The import of this inscription has been stated in Section (iv) of Part III which deals with depreciation on machinery and plant not being a ship of the same appendix.

Placing reliance on these two specific provisions the learned Counsel urged that extra shift allowance for additional shifts worked by factory for the purposes of computing additional depreciation is not available in the case of specific entry air-conditioning machinery by reference to another entry providing rate of depreciation generally used in that business. He placed reliance on a decision of this Court in Bharat Suryodaya Mills Vs. Commissioner of Income Tax, 212 ITR p.6.

It has been countered by Mr. Divetia that the Tribunal has accepted the assessee's contention on the basis of certificates issued by South Gujarat Textile Processors Association and Manmade Textile Research Association that the air-conditioners are part of the Crimping machinery and this being a finding of fact not challenged by the Revenue as a finding of fact, ought to have been challenged, the air-conditioners ought to be treated as a part of the plant or machinery falling in item 3 of Part III(i)B of Appendix I referred to above and item (3) being not suffixed by inscription "NESA" clause (iv) of Part III has no application so as to deny the petitioner claim for extra shift allowance in respect of machinery in question. He strongly placed reliance on Industrial Machinery Manufacturers' Pvt.Ltd. (16 STC 380) case referred to above and another decision of this Court in Commissioner of Income Tax Vs. Tarun Commercial Mills Ltd., 151 ITR p.75.

Before proceeding further, we may deal with the preliminary objection raised by the learned Counsel for the assessee. It was urged that since the Tribunal has found that air-conditioners are part of the Crimping machinery and that finding has not been challenged by raising a specific question, no further question for considering air-conditioners as not Crimping machinery but some other machinery can arise for consideration. Having carefully read the order of the Tribunal, we are of the opinion that this reading of the finding as such is not appropriate reading of the order. The context of two certificates which have been produced by the assessee in support of his case that air-conditioners are necessary for use of crimping machinery and that crimping yarn plant cannot function without air-conditioners as such air-conditioners as are installed in a crimping yarn unit must necessarily treated artificial art silk plant. In the light of this plea the two certificates reproduced in the order itself reads in no unmistakable terms that what is meant by this finding is that use of air-conditioners are necessary and essential for the process of crimping of nylon yarn or for the functioning of crimping machinery. The certificate from South Gujarat Textile Processors Association reads that "air-conditioners (apparatus) is part and parcel for the working of crimping machine in a crimping unit and without the simultaneous working of air conditioning machine, no crimping machinery can work. Therefore, in a crimping unit which works for 24 hours, the air conditioning machinery must work for 24 hours."

The other certificate reads "This is to certify

that crimping of Nylon yarn on a crimping machine is always done in an air conditioned atmosphere."

It is on the basis of these two certificates that the finding of the Tribunal has been recorded. The true meaning of finding has to be read in the context of contention about such fact has been raised. In the light of assessee's own case, the finding is acceptance of his plea that air-conditioners are necessary for the use of crimping machinery for carrying on the process of crimping of Nylon yarn.

We will now proceed to examine the issue before us in the light of the finding recorded by the Tribunal, as explained and suggested by the learned Counsel for the assessee that air-conditioners are necessary for the use of crimping machine at the petitioner's factory for manufacture of crimping yarn. This is also to be taken into consideration that at no point of time there is any dispute between the parties that but for the use to which it is being put the machinery in question is and fall in the category of air-conditioning machinery. They are described through out as air-conditioners used for crimping yarn machinery. Therefore, the question which requires to be answered is whether air-conditioners which are necessary for the use of crimping yarn machine are eligible for extra shift allowance by treating it to be a machinery or plant falling in the category of artificial silk manufacturing plant/machinery or it should be treated as air-conditioning machinery used for artificial silk manufacturing machinery/plant.

At the out-set, we may notice that depreciation on certain fixed assets owned by an assessee is required to be allowed as deduction under Section 32 of the Income Tax Act, 1961 since Sec.(1) of which opens with the words:

"In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of business or profession the following deductions shall subject to the provisions of Section 34, be allowed--

(i) in the case of ships other than ships ordinarily plying on inland waters, such percentage on the actual cost thereof to the assessee as may, in any case or class of cases or in respect of any period or periods, be prescribed:

Provided that different percentages may be prescribed for different periods having regard to the date of acquisition of the ship;

(ii) in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed:

Provided that where the actual cost of any machinery or plant does not exceed seven hundred and fifty rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession:

Provided further that no deduction shall be allowed under this clause or clause (iii) in respect of any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975, and is used otherwise than in a business of running it on hire for tourists;

(iii) ...."

In the four expressions used under Section 32, the word "plant" can be of the widest import, though it has different shades of meaning. In the Concise Oxford Dictionary, different shades of meaning has been assigned to word "plant". One meaning falls in the realm of botanical expression pertaining to vegetation; as a noun it has been defined to a small organism of this kind as distinguished from a shrub or tree. Obviously we are not concerned with this meaning. Amongst other meanings which have been assigned to it in one sense it means `machinery, fixtures etc. used in industrial process', in another sense it means `a factory itself'.

In the Websters Third New International Dictionary, the meaning of word "plant" has been stated to be, which may be relevant for the present consideration, `land', `building', `machinery', `apparatus', fixtures employed in carrying on a trade or

a mechanical or other industrial business. It has also been stated to mean `a factory', `work of a particular product for example an automobile plant or an ice-cream plant' and yet greater import has been given to mean the `total facilities available for production or the service in a particular country or place'. In another shade it has been defined to mean `a piece of equipment or a set of machine/parts functioning together for the performance of a particular operation'.

We may also usefully refer to the meaning of "plant" as given in Words and Phrases legally Defined (Bulterwath) which states that "In the context of an Act which deals with what goes on in factories, "plant" is an ordinary English word in common usage whose meaning is well understood. To quote the Shorter Oxford English Dictionary it means "The fixtures, implements and apparatus used in carrying on any industrial process".

In this connection a decision in Benson (Inspector of Taxes) Vs. Yard Arm Club Ltd. (1979) 2 All ER 336 at 346, CA, per Shaw LJ may also be referred to wherein considering the question of "plant" the Court said "the characteristic of plant appears to be that it is an adjunct to the carrying on of a business and not the essential site or core of the business itself."

We may in this connection also refer to meaning of plant in the context of activity of carrying on business to the meaning assigned to plant and machinery in Stroud's Judicial Dictionary, wherein it has been stated "plant and machinery are two quite different things, speaking generally machinery includes everything which by its action produces or assists in production; and that "plant" might be regarded as that without which production could not go on .... and included such things reference was made to as brewer's pipes, vats, and the like"; and reference was made to opinion of Kekewich J. in Re Brooke, 64 L.J Ch. 27.

Reading dictionary meaning of "machine", as given in the Concise Oxford Dictionary, it means `an apparatus using or applying mechanical power having several parts each with the definite function and together performing certain kinds of work and that an instrument transmits or directs a force on apparatus, machines collectively known as machinery. The components of a machine or a mechanism of machine also conveys the same meaning.

Stroud's Judicial Dictionary, while giving meaning to "machinery" reads, `Machinery' implies the application of mechanical means to the attainment of some particular end by the help of natural forces; `operative machinery' means machinery with the potentiality of operating or doing work.

According to plain dictionary meaning in its widest connotation in the context of trade or business, the expression plant may sometime mean factory itself as one composite unit including all buildings, machinery and apparatus therein which are required for the purposes of the factory. Obviously, the term plant has not been used under Section 32 of the Act or for that matter under the Rules framed thereunder in that wide meaning. The very fact that four different terms have been used namely building, machinery, plant and furniture, the term plant has been used in a narrow or sense to mean that it includes whatever apparatus is used by a person carrying on his business which is not as a stock in trade which he buys or makes or sell and which may not fall in the category of the building, machinery or the furniture as such. Thus, in principle the argument that the unit as a whole must be treated as a plant manufacturing artificial silk without identifying the individual apparatus installed therein or used therein for the purposes of carrying business of the assessee in order to compute allowable deduction as depreciation under Section 32 of the Act cannot be accepted.

Clearer distinction in the context of the provision with which we are concerned has to be borne in mind that exist between different meaning which the expression plant may convey. In its broadest sense it may mean the whole gamut of business organisation owned by assessee. In a different context it may mean a factory which may include buildings, roads, sheds, machinery and all apparatus which are necessary for its functioning as a whole and in yet another sense it may mean each apparatus by itself which may properly termed as fixtgure, implement and apparatus used in carrying on any industrial activity. Keeping in view the broad meaning which can be assigned to plant has to mean organisation itself or to include within itself of apparatus, which may be machinery as well and keeping in view use of seperate expressions in the Act and presumption of different rate on withdrawal value of each building, machinery and plant used in carrying on business of the assessee, whether of manufacture or not, it must be held that what is required to be considered

for the purpose of computing depreciation which can be allowed as deduction is each building, machinery or plant falling within the narrower description of the term. In view of the aforesaid, we are unable to accept the contention of the learned Counsel for the assessee that "plant" for the purposes of computation of allowable deduction as depreciation under Income Tax Act should be taken to mean as entire organisation or unit as a whole comprising of all apparatuses installed therein which are necessary for its function but it will have to be seen that for the purposes of carrying on business of the assessee what apparatuses are owned by the assessee at one or more places of business where his activity of business is being carried on whether of manufacture or trading and whether they are being used for the purposes of carrying on business generally. Once these tests are satisfied, the question for computation of deduction arise in respect of written value of each asset machinery or plant on the basis of rates which have been prescribed by Rules.

So far as the present case is concerned, the controversy whether the air-conditioners are machinery or plant or whether the same are used for the purposes of carrying on business by the assessee who owns the assets in question does not arise as the same are accepted premises. The question therefore, which really arises taking air-conditioners individually, can it be said to be a plant or machinery conforming to the description of artificial silk manufacturing plant or an air-conditioning machine. It is also not in dispute that the assets in question is primarily an air-conditioning machinery and do fall within the description of item (2) under Section (ii) "B" of Part III of Appendix I (Part-I) providing different rates of depreciation on machinery and plant other than ships. It is also not in dispute that the said air-conditioners are necessary for the purpose of functioning of yarn crimping machine for the end product of the factory. So, can it be said that because the air-conditioners are necessarily used for the functioning of the factory, it becomes an artificial silk manufacturing machinery or plant? On a close reading of the scheme of the Act and the Rules, our answer to the question is in the negative. As we have discussed above, under the very scheme of the statutory provision, each apparatus conforming to the definition of machinery or the plant as the case may be, has to be taken individually for the purpose of considering computation of depreciation and not the organisation or the unit as a whole by treating each and every apparatus which are necessary for the function of the factory as forming

integral part of the factory, known as artificial silk manufacturing plant. Once that premises is reached, the further conclusion does not pose much difficulty.

Earlier, we have seen that depreciation has to be calculated at the rate prescribed. Under the definition clause of the Act prescribed means, prescribed by Rules. Rule 5 of the Income Tax Rules provides that depreciation is to be calculated at the percentage specified in the second column of the table in Part I of Appendix I to the Rules on the actual cost or, as the case may be, on the written down value of such of the assets as are used for the purposes of the business or profession of the assessee at any time during the previous year. Pausing here, the use of words "such of the assets" in Rule 5(1) further fortifies our conclusion that each of the assets owned by the assessee for the purposes of his business is to be taken individually and independent of each other, though one may be necessary for the functioning of the other if it is not integral part of the other asset itself. Once an apparatus becomes integral part of another asset as such, it looses its independent identity as an asset and the asset of which it becomes integral part is only to be considered as an asset. For example, when the assessee owns a motor car for the purposes of his business, necessarily it includes all the parts which go into the making of the car and necessary for its running, notwithstanding the fact that individually taken some of the parts by itself may be treated as machine or plant, or a dynamo if used independently may itself be a machinery but when fitted in another it loses its identity as machine independent of the machine in which it is fitted. To say in other words unless one apparatus which independently is a plant or machine, when fitted to another machine to make that machine complete, becomes integral part of the concerned asset itself and looses its independent identity then it cannot be said that the two assets exist. But mere inter-dependency of each other for their functioning does not make two assets one for the purposes of claiming depreciation. The view that when a machine becomes integral part of another machine or plant then it cannot be treated separately and has to be treated as a part of that machine itself find supports from an earlier decision of this Court in State of Gujarat Vs. Jayant Paper Mills 81 Taxation 367 wherein Court after referring to two decisions of the Punjab & Haryana and Kerala High Court 98 ITR 78 and 109 ITR 43 respectively observed "there does not appear also serious controversy that where electric installations become integral part of other machines, they become eligible for extra shift allowance as part of general machinery, but

if such electric installations are independent of other machines then they are not eligible for extra shift allowance."

The provision for extra shift allowance where a concern works double shift or triple shift is also provided in the appendix I as a part of rate structure for allowance of depreciation as deduction. While dealing with the rates applicable to machinery and plant for depreciation, we may notice that in the first instance in Part III of the table, general rate of depreciation was provided under item (i) by saying that general rate applicable to machinery and plant not being a ship for which a special rate has been fixed under item (ii). Item (ii) deals with special rate under various sub-divisions from (a) to (f). Item (iii) deals with extra depreciation allowance for approved hotels and item (iv) deals with extra shift allowance. Firstly, a provision is made that an extra shift allowance shall be allowed where a concern claim such allowance on account of double shift or on account of triple shift working and establishes that it has worked double shift or triple shift as the case may be subject to maximum limit specified in the provision with which we are not concerned. It also provides that in respect of certain machinery or plants shall not be allowed. It says that extra shift allowance shall not be allowed in respect of any item of machinery or plant which has been specifically excepted by inscription of the letters "NESA" meaning, `No Extra Shift Allowance' against it. In sub-item (ii) and also in respect of the machinery and plant to which general rate of depreciation of 10% applies on the items enumerated under item (iv). This provision which had been reproduced in the earlier part of our discussion further clarifies that for the purposes of eligibility of extra shift allowance each item of machinery or plant is to be treated separately. Secondly, it gives clue that wherever any item has found with specific mention under sub-item (ii) of part B of the table and extra shift allowance was not to be allowed, such specific item has been suffixed with inscription NESA and since it was not possible to insert this inscription in respect of items to which general rate was applicable, specific items have been enumerated for the purposes of such non-allowance of extra shift allowance. Therefore, no distinction can be drawn between the items enumerated under sub-item (iv) of Part III of the table and the items followed with inscription NESA under sub-item (ii). In that view of the matter, whatever rates are prescribed under sub-item (i) and (ii) of the Part-III of Appendix I in the first instance,

depreciation has to be calculated at the rates as have been stated in column 2 of the table against each item and thereafter alone, the question of computing extra shift allowance subject to the eligibility of each item of machinery or plant has to be considered. Therefore, the fact that a particular type of machinery has been enlisted for computation of depreciation at special rate other than general rate would not by itself be a ground for treating the two sets of machinery and plant falling under general rate or special rate, would make any difference. Obviously, when air-conditioning machinery has been enlisted as a separate item of machinery or plant for the purposes of computation of rate of depreciation and it has also been enlisted for no extra shift allowance, it cannot be treated as artificial silk manaufacturing machinery by treating it to be necessary part of the unit manufacturing artificial silk falling under that item unless it has become integral part of other machinery. It is well known principle of interpretation that where there are two entries covering the same item, one special and another general, the applicability of general provision shall be excluded. The principle finds its expression in the maxims Generalia Specialibus non derogant and Generaliabus Specialia derogant. These maxims spell out that general things do not derogate from special things but special things derogate from general thing. Familiar approach in such cases is to find out which of the two provisions canvassed is more general and which is more specific and to construe the more general in a way to exclude from it the more specific. In this connection we may refer to the case of South India Corporation Pvt.Ltd. Vs Secretary, Board of Revenue - 1964 S.C 207:-

> "It is settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply."

This principle was reiterated in State of Rajasthan Vs. Gopi Kishan Sen - 1992 S.C 1754. The Court in para 6 of the judgement, said:

> "The rule of harmonious construction of apparently conflicting statutory provisions is well established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose. In the present case Rule 29 dealing with

> payment of increment is in general terms while the Schedule in the 1969 Rules makes a special provision governing the untrained teachers, attracting the maxim `generalibus specialia derogant' i.e. if a special provision is made on a certain subject, that subject is excluded from the general provision. The Schedule in the 1969 Rules, therefore, must be held to prevail over the general provisions of 1951 Rules."

It may also happen that in a given case the two entries vis-a-vis which the question arises for consideration both fall in a separate special category, in that event also it has to be considered out of the two which provides for general applicability of the genere and which provides further specification. If we examine the issue from that point of view, it is apparent that out of the two entries, air-conditioning machinery and artificial silk manufacturing machinery and plant though placed in sub-item 2 for the purpose of providing special rates of depreciation, the artificial silk manufacturing machinery and plant by itself is of general description meaning thereby all items of machinery and plant of artificial silk manufacturing like any other machinery and plant of any other manufacturing, would fall in general category where a special rate has not been prescribed and vis-a-vis controversy in question air-conditioning machinery installed at any manufacturing factory will form a distinct item of asset calling for treatment of depreciation then machinery and plant in general for functioning of that factory. To illustrate, textile manufacturing machinery and plant is not separately dealt with for the purposes of special rates and the same would attract general rate applicable under sub-item (i). If the provision has to be applied with respect to textile machinery and plant, it would read rate applicable to textile machinery and plant under sub-item (i). Obviously, in that event while the textile machinery and plant is being dealt with under general item, the air-conditioning machinery will have to be dealt with as an item of machinery and plant dealt with specifically under sub-item (2) of item (ii). Applicability of maxim generalibus specialia derogant shall not raise any difficulty. Likewise, when the question would arise for computing deduction for depreciation in respect of artificial silk manufacturing machinery and plant, while all machinery and plant necessary for functioning of artificial silk manufacturing unless there are other provisions to deal with the same fall within any item specifically, the same

would be dealt with in like manner for the purpose of calculating depreciation. However, if any of the items though necessary for running artificial silk manufacturing unit falls within specific the description of machinery and plant under any other sub-item of the appendix I, it would loose its identity with the general character of the artificial silk manufacturing machinery and plant, but will have to be dealt with as an item separately dealt with under the table and that specific provision would govern the applicability. In other words, it can be said that in the first instance the rate of general depreciation has to be prescribed under sub-item (i) and sub-item (ii) of the table and thereafter, when the question of extra shift allowance arises to be considered under sub-item (iv), it has to be seen what specific items have been excluded from the applicability of extra shift allowance and if any of the items has been specifically so excluded either by inscribing NESA while including that item under description of machinery and plant slated for special rate or are subjected to general rate, such item cannot be made available for computation of extra shift allowance. We may notice that it was also not seriously disputed by the learned Counsel for the assessee if the question have arisen in the context of air-conditioning machinery installed in a textile manufacturing unit.

In reaching this conclusion, we are also fortified by the decision of this High Court in - 212 ITR 6, where the question arose in connection with grant of extra shift allowance on electrical machinery. Referring to the provisions of Rule 5 and Appendix 1 referred to above, the Bench to which one of us was a party (R.K.Abichandani,J.) speaking for the Court said

> "in view of the above specific provision, it is clear that the extra shift allowance benefit was not available for the electrical machinery. The Income tax Officer had, therefore, no power to allow extra shift allowance on electrical machinery."

We may notice here that the question has arisen on the like contention raised by the assessee in the case in respect of electrical machinery. The assessee had claimed extra shift allowance on electrical machinery allowed by the Income Tax Officer in the first instance, however, noticing the aforesaid provision under Rule 5 read with appendix I, a notice to show cause was issued to the assessee for rectifying the mistake which was

considered to be apparent from the record and the order was rectified by him. The assessee had contended that the machinery form part and parcel of the machinery as a whole and could not be treated as electrical machinery as is the contention before us that air-conditioners form part and parcel of the artificial silk manufacturing machinery as a whole and shall fall within that description and on that premises it was further contended that since this question raised an arguable issue the pre-condition for invoking the provisions for rectification did not exist. This contention that the issue raises any arguable question obviously did not find favour with this Court, which is apparent from the aforesaid conclusion. Thus, this Court has found that this proposition does not raise an arguable issue so as to have two opinion on the question.

Coming to the decisions relied on by the learned Counsel for the assessee, we first refer to Industrial Machinery Manufacturers' Pvt.Ltd. case (16 STC 380). Having carefully considered the decision, we are of the opinion that the ratio of the case has no application to the facts before us. It related to the Sales Tax applicable to the humidifiers used by the textile mills. The finding of the Revenue was that from the material placed before them it appeared that the humidifiers were used in various Departments of textile industry for improving the quality and production in general. It also appeared that modern textile industry cannot do without such humidifiers and accepted the position that humidifiers are necessary for the production of the cloth in that by maintaining a particular humidity in the room in which the manufacturing process is being carried on, they help to increase the length and strength of yarn and that modern textile industry cannot do without humidifiers. To this extent facts found in the case at hand are similar. However, the similarity ends when the question of application of law or determining to which particular entry the item belongs arises. The Court was considering the question that whether it fall in entry 15 of the schedule C of the Bombay Sales Tax Act. 1959, which read as machinery used in manufacture of goods. The other entry which was relevant for the purposes of tax under the Bombay Act was entry 20 of the Schedule which prescribed rate on electrical goods. The Department had taken the view that since humidifiers were run by electric motors they were electrical goods. There was no dispute about that also. Here the general entry affecting the electrical goods was entry 20 and the special entry was entry 15 concerning machinery used in manufacture of goods which may be of any type electrical,

mechanical, manual or other. Considering the meaning of the word `used in' on the basis of facts arrived at by the Revenue authorities, the Court held

> "Manufacture of goods means the process of converting raw materials into finished goods and whatever machinery is required for converting raw materials into finished goods would be machinery used in the manufacture of such goods. Every item of machinery which has a use in the manufacture of finished goods which plays some role in the process of manufacture of finished goods and without which manufacture of finished goods would not be possible would be machinery used in the manufacture of such goods. Such machinery would be an essential and integral part of the plant which manufactures finished goods and would certainly satisfy the description that it is machinery used in the manufacture of finished goods. If this test be applied, it is clear that humidifiers are machinery used in the manufacture of cloth."

Thus, it is apparent that the Court was concerned with the question whether a particular item of machinery on which rate of tax was to be applied was a machinery used in manufacture of goods and was not concerned with whether the machinery is a textile machinery as such. The term "plant" was used in the sense of manufacturing unit as a whole and not with reference to indicate separate apparatuses composing that unit. The case before us is whether air-conditioners are artificial silk manufacturing machinery or plant. The question before us is not whether air-conditioners are used in the manufacture of artificial silk. We may further notice that this distinction has clearly been made out in the said decision itself while dealing with decision of Allahabad High Court in Delta Engg.Co. - 14 STC 515 in which question raised was whether the water pumps are agricultural implement when they are used for pumping out water from tube wells for the purposes of irrigation. The Allahabad High Court had negatived the contention of the assessee to treat the water pumps used for agricultural purposes, as an agricultural implement calling for applicability of rate of tax as was applicable to agricultural implement. When the said decision was pressed into service by the Revenue for canvassing before the Court that humidifiers used in textile machinery merely because of such user does not become textile machinery so as to attract sales tax at the rate applicable to such machine, the Court rejecting

the plea of the Revenue said

> "It is difficult to see how this decision can assist us in determining the question which arises on the present reference. In this case the Court was concerned with the limited question as to whether water pumps could be said to be agricultural implements. The question was not whether water pumps could be said to be machinery used in agriculture. The question which we have to consider is, however, an entirely different question, namely, the true connotation of the expression "machinery used in the manufacture of goods".

This distinction is apparent in the present case as well. Here we are not concerned whether the air-conditioners are machinery used in manufacturing of artificial silk but we are concerned whether the air-conditioners are by themselves artificial silk manufacturing machinery or plant. Therefore, the question of determining whether air-conditioners used in the artificial silk plant can be treated to be an integral part of any other machine used in that factory has to be decided independent of it being used in that factory. Therefore, the aforesaid decision does not assist the assessee in any manner.

The other decision which has been relied upon by the learned Counsel for the assessee is CIT vs. Tarun Commercial Mills Ltd. - 151 ITR 75 wherein this Court has held that air-conditioners is to be treated a plant and not an office appliance. As we have already noticed there is no dispute before, nor it is the case of the Revenue that air-conditioners are not plant or machinery at all. Therefore, we are unable to see how this case advances the case of the assessee in any manner.

There is yet another reason which fortifies our conclusion. The phrases used in entry 2 of sub-item (ii) under Para III of Appendix I is air-conditioning machineries including room air-conditioners. This goes to show that this entry deals with all types of air-conditioning machinery whether used in room, factory or office or any other place of business irrespective of any particular use to which it is put. The air-conditioning machinery in any form including even if it be a room conditioner only, is subjected to special treatment with non-applicability of provisions relating to extra shift allowance. The applicability of this

provision is not depending upon the particular use to which an air-conditioning machinery is put. If we are right in our conclusion and we think so, there is no room for accepting further argument that it should be treated to be falling in another description because its use is necessary for the functioning of a manufacturing unit of the assessee.

Taking the other view shall render the item (2) or for that matter most of the separate entries of Section (ii) B of Part III of Appendix Part I shall be rendered otiose. Interpretation leading to such result has to be avoided.

For the reasons aforesaid, we are of the view that the Tribunal was not justified in holding that air-conditioners which are necessary for functioning of the crimping yarn machine of the assessee are eligible to extra shift allowance for the purposes of computing depreciation under Section 32 of the Act.

Accordingly, we answer question referred to us in the negative in favour of the Revenue and against the assessee. This reference stands disposed of accordingly with no order as to costs.
